

In March 2008, the State charged Marvin Lee Walker with violation of a domestic violence no contact order under RCW 26.50.110(5). Because Walker had

two previous convictions for violating a no contact order, the charge was a felony.¹

Before trial, Walker filed a motion to exclude evidence of his prior convictions for violation of a no contact order. Walker asserted that his convictions for violation of a no contact order in 1998 and 1999 were constitutionally invalid because he did not knowingly, intelligently, and voluntarily waive his right to testify at trial. Walker argued that because the guilty plea forms did not explicitly inform him of his right to testify at trial, the State could not establish that he waived that constitutional right.

The trial court denied Walker's motion to exclude his prior convictions. The court ruled that the prior convictions were constitutionally valid and that the State could present the convictions at trial to establish felony violation of a no contact order.

(1) the State has proven the constitutional validity of the defendant's prior convictions in the 98- and 99- cause numbers, (2) the State has proven that the prior convictions were for violations of a No Contact Order issued under one of the requisite statutes and are, therefore, valid as a matter of law, and (3) the prior convictions may be presented to the jury as predicate convictions for the charge of [felony violation of a no contact order] in this case.

The jury found Walker guilty of the crime of felony violation of a domestic violence no contact order as charged. In the special verdict form, the jury found that Walker had two previous convictions for violating the provisions of a no contact order. The court sentenced Walker to a low-end standard range sentence of 13 months.

¹ RCW 26.50.110(5) provides in pertinent part, "A violation of a court order issued under this chapter . . . is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter"

ANALYSIS

Walker asserts that the trial court erred in admitting his two prior convictions because he did not knowingly, intelligently, and voluntarily waive his right to testify at trial when he pleaded guilty to the predicate convictions. Walker specifically contends that because the guilty plea forms did not explicitly inform him of his right to testify at trial, the State could not show that he waived that constitutional right.

The constitutional validity of an order is a question of law for the court to resolve. State v. Miller, 156 Wn.2d 23, 31, 123 P.3d 827 (2005) (holding that the validity of an order is a preliminary question for the court and not a factual element for the jury). In challenging the constitutional validity of a conviction, the defendant “bears the initial burden of offering a colorable, fact-specific argument supporting the claim of constitutional error in the prior conviction.” State v. Summers, 120 Wn.2d 801, 812, 846 P.2d 490 (1993). The burden then shifts to the State to prove beyond a reasonable doubt that the conviction is constitutionally valid. Summers, 120 Wn.2d at 812.

A defendant’s right to testify at trial is a constitutional right. Rock v. Arkansas, 483 U.S. 44, 52, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987). To be constitutionally valid, a guilty plea must be “intelligently and voluntarily made and with knowledge that certain rights will be waived.” State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). To determine whether a plea is knowingly, intelligently, and voluntarily made, we must

consider the totality of the circumstances. Branch, 129 Wn.2d at 642. Provided the record establishes that the plea was made intelligently, voluntarily, and with knowledge of its consequences, the plea does not need to list every right being waived to be constitutionally valid. Wood v. Morris, 87 Wn.2d 501, 508, 554 P.2d 1032 (1976).

Based on the felony plea form submitted by Walker as part of the record below, we conclude that Walker met his initial burden and the State carried its burden of proving that Walker's pleas are constitutionally valid.

In the 1998 and 1999 Statement of Defendant on Plea of Guilty, Walker admitted:

**I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I
HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE
THEM ALL UP BY PLEADING GUILTY:**

. . .

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

. . .

(d) The right at trial to have witnesses testify for me . . .

. . .

I make this plea freely and voluntarily.

The paragraph immediately above Walker's signature states:

My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this 'Statement of Defendant on Plea of Guilty.' I have no further questions to ask the judge.

In addition, the paragraph above the judge's signature line provides:

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.²

Although the plea form does not expressly state that Walker was one of the witnesses that he could call at trial, this conclusion is implicit in the language used and the circumstances of his guilty plea.

There is no dispute that Walker acknowledged that he waived the right to call witnesses on his behalf and that he could waive his right to remain silent and be questioned as any other witness. The fact that Walker could call witnesses and be questioned as any other witness logically implies that he had the right to testify on his own behalf. See Rock, 483 U.S. at 52, citing United States v. Valenzuela-Bernal, 458 U.S. 858, 867, 102 S.Ct. 3440, 3446, 73 L.Ed.2d 1193 (1982) ("Logically included in the accused's right to call witnesses whose testimony is 'material and favorable to his defense,' is a right to testify himself, should he decide it is in his favor to do so.").³

Walker also expressly acknowledged that he discussed the form fully with counsel before signing and therefore we presume he had the opportunity to discuss his rights

² The page of the 1999 guilty plea with the judge's signature is not included in the record.

³ Moreover, Walker cites no authority for the proposition that the right to testify on his own behalf must be explicitly listed in a plea agreement to satisfy due process. Because he has cited no authority, we must presume he has found none. State v. Young, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978).

with his lawyer before signing the plea agreement. In addition, the judge's signature provides an independent determination that Walker waived his rights knowingly, intelligently, and voluntarily.

In sum, the record demonstrates that Walker signed the plea forms, consulted with his counsel and fully understood his rights before signing the plea agreements, and a judge independently determined that the plea was voluntary. Under the totality of the circumstances, we conclude that the State carried its burden to prove the constitutionality of Walker's prior convictions.

We affirm.

Schindler, C.

WE CONCUR:

Jan, J.

Cox, J.